

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>BEST MEDICAL INTERNATIONAL, INC.,</b>	)
<b>Plaintiff,</b>	)
	)
<b>v</b>	) <b>2:10-cv-1043</b>
	)
<b>ACCURAY, INC., a corporation,</b>	)
<b>Defendant.</b>	)

**ORDER OF COURT**

On May 13, 2011, after consideration of the parties' proposed Special Master candidates, the Court appointed Gale R. Peterson, Esquire of the Cox Smith law firm in San Antonio, Texas to serve as Special Master throughout the claim construction process in this case including, but not limited to, conduct of the Claim Construction Hearing and preparation of a Report and Recommendation to the Court and parties thereafter. The Appointment Order provided, *inter alia*, that: "All reasonable costs and expenses related to the services rendered by the Special Master shall be shared equally by the parties."

The Special Master traveled to Pittsburgh and conducted a claim construction hearing with the Court on May 16, 2012. On September 7, 2012, the Special Master filed a Report and Recommendation ("R&R"). By correspondence dated October 15, 2012 Special Master Peterson submitted an invoice to the parties, seeking payment of "Total Fees" of \$185,000.00 and "Total Disbursements" of \$7,815.12, for a "Total This Invoice" of \$192,815.12. The invoice directed payment from each party of its one-half share of \$96,407.56. The Court was not copied on the invoice. Apparently, no itemization of time expended, services of personnel, billing rates or supporting documentation of expense disbursements was provided.

The Court has received a request from counsel for assistance in obtaining detailed itemized information concerning the fees and expenses incurred by the Special Master in this matter. In particular, to enable them to evaluate the reasonableness of the claimed fees, counsel seek itemized

billing records which show the identity of the persons who billed on this matter; their respective billing rates; a summary of their activities; and the dates and amounts of time spent on each activity. The attorneys also request an itemized list of the claimed disbursements with copies of receipts. To be clear, it is unknown whether or not there will be formal objections to the fees/expenses claimed by the Special Master. At this juncture, the attorneys are merely seeking additional explanation and supporting documentation.

The Court concludes that the attorneys are entitled to the information they have requested. The Court further notes that it has a duty to award “reasonable” fees and expenses. Pursuant to Fed. R. Civ. P. 53(g)(1), before or after judgment the Court must fix the master’s compensation on the basis and terms stated in the appointing order, or may set a new basis and terms after giving notice and an opportunity to be heard. Thus, the information requested by the attorneys will also be of assistance to the Court.

AND NOW, this 17<sup>th</sup> day of December, 2013, in accordance with the foregoing, it is hereby ORDERED that Special Master Peterson shall provide to the Court and to counsel for the parties itemized billing records sufficient to evaluate the reasonableness of the total fees, including the identity and capacity of the persons who billed on this matter; their respective billing rates; a summary of their specific work activities; and the dates and amounts of time spent on each activity. In addition, Special Master Peterson shall provide an itemized list of his total expense disbursements with copies of receipts. Such information shall be provided on or before January 7, 2013, but need not be filed of record at this time, pending the potentiality of formal objections.

BY THE COURT:

s/Terrence F. McVerry  
United States District Judge

cc: Special Master  
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